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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

LOLA AMACHER, an individual,

Plaintiff,

v.

CITY OF LAKE OSWEGO, a municipal corporation; ROB AMSBERRY, a city engineer; and EMERY & SONS CONSTRUCTION INC., an Oregon corporation,

Defendants.

Case No.

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

(42 U.S.C. § 1983 Due Process Violation; Inverse Condemnation; Negligence)

DEMAND FOR JURY TRIAL

For her Complaint in this action, Plaintiff Lola Amacher alleges as follows:

I. PARTIES

1. Plaintiff Lola Amacher is, and at all relevant times herein has been, an individual residing in Clackamas County, Oregon.

2. At all times relevant, Defendant City of Lake Oswego (hereinafter "City") was and is an incorporated political subdivision of the State of Oregon and a public entity with the power to exercise the right of eminent domain and other governmental powers.

3. At all times relevant, Defendant Rob Amsberry (hereinafter "Amsberry") was and is an engineer for the City. This lawsuit is brought against defendant Amsberry in his individual and official capacities. Defendant Amsberry acted under color of state law by virtue of his authority or perceived authority as an engineer for the City.

4. At all times relevant, Defendant Emery & Sons Construction Inc. (hereinafter "Contractor") operated independently and as an agent of defendant City, acting through the course and scope of that agency.

II. JURISDICTION AND VENUE

5. This Court has federal question jurisdiction over the subject matter of this complaint pursuant to 28 U.S.C. § 1331 based on claims arising under the Civil Rights Act, 42 U.S.C. § 1983.

6. This Court has supplemental jurisdiction over Ms. Amacher's state-law claims set forth in this Complaint pursuant to 28 U.S.C. § 1367(a).

7. Pursuant to 28 U.S.C. § 1391, venue is proper in this District because all parties to this action are residents of this District and the various acts of the City, defendant Amsberry, and defendant Contractor (collectively, "Defendants"), including the damage, destruction, and occupation of Ms. Amacher's property, occurred in this District.

III. FACTS

8. Ms. Amacher owns real property located at 5580 Suncreek Drive in Lake Oswego, Oregon (the "Property").

9. On or about November 15, 2015, a large sinkhole developed on the Property after an underground pipe maintained by the City collapsed and inundated the area with water. The

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resulting sinkhole caused significant damage to trees, shrubs, landscaping, and a fence located on the Property, as well as compromised the integrity of the surrounding soil.

10. Starting on or about November 15, 2015, employees and agents of the City entered onto the Property in an effort to repair the collapsed pipe and resulting damage to the Property (the "Project"). The City and the Contractor entered into an agreement in which the Contractor agreed to participate with the City, and at its direction, in repairs to the Property.

11. Between November 15, 2015 and August 2016, employees and agents of the City, including employees and agents of the Contractor, performed substantial repair and remediation work on the Property, including installation of temporary and permanent fencing, destruction and installation of a new irrigation system, removal of trees, shrubs, and landscaping, and planting new shrubs and landscaping.

12. On or about February 26, 2016, Ms. Amacher fell and sustained personal injuries as a direct result of the uneven and unstable condition of her Property caused by the work performed by employees and agents of the City in furtherance of the Project.

13. On or about May 3, 2016, the City, acting through defendant Amsberry, sought to acquire a retroactive "Right-of-Entry" from Ms. Amacher based on the work performed by Defendants in furtherance of the Project. Defendant Amsberry offered Ms. Amacher $6,800.00 as compensation for the use and occupation of her Property pursuant to the Project.
Ms. Amacher responded that she would not accept the City's $6,800.00 offer of compensation because the Project was not completed and thus she did not understand the amount of time required to complete the Project and the extent of the impact of the Project to her Property. In addition, Ms. Amacher explained that her husband was critically ill at the time.

14. Between November 2015 and July 2016, Ms. Amacher communicated with employees and agents of the City, including defendant Amsberry, to discuss work performed on her Property pursuant to the Project. During these discussions, Ms. Amacher expressed her concerns with the work performed by Defendants, including that excessive amounts of water

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were being used by the new irrigation system, resulting in significantly increased water utility bills and large quantities of standing water on the Property.

15. On or about July 26, 2016, defendant Amsberry communicated to Ms. Amacher that she had until August 8, 2016 to accept the City's offer of $6,800.00 or the offer would be rescinded. At the time, defendant Amsberry was aware that Ms. Amacher's husband had recently passed away.

16. When Ms. Amacher attempted to discuss the City's offer after August 8, 2016, defendant Amsberry responded that the offer was no longer available.

17. Upon information and belief, defendant Amsberry's statement to Ms. Amacher that the $6,800.00 offer was no longer available was pursuant to a policy, custom, or practice of the City. Specifically, the City has adopted and employed a policy, custom, or practice in which a property owner is offered compensation for the City's interference with property that is below market value. The City then limits the time a property owner has to accept its offer of compensation and will deny any claim or request for compensation that does not comport with the City's terms. Therefore, a property owner must acquiesce to the City's terms in order to receive compensation.

18. On or about September 26, 2016, Ms. Amacher submitted a claim to the City for personal injuries she sustained falling due to the uneven and unstable condition of her Property.

19. Ms. Amacher reported continued issues with the irrigation system leaking on her Property, necessitating additional visits by Defendants to try and resolve the issue. Despite these efforts, Ms. Amacher continues to receive abnormally high water utility bills and have excess water on her Property even when the irrigation system is turned off.

20. In January 2017, water was found flooding into the basement of Ms. Amacher's home from areas of the Property adjacent to where work was performed pursuant to the Project. Further inspection revealed a significant amount of standing water in the basement of the Property, necessitating the installation of a sump pump and drainage system to prevent further

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flooding. Ms. Amacher's basement had never flooded during the prior 10 years she lived on the Property.

21. On February 13, 2017, the City denied Ms. Amacher's claim for personal injuries.

22. On February 23, 2017, Ms. Amacher submitted a Tort Claim Notice to the City pursuant to ORS 30.275, providing notice of her intention to assert claims against the City and its employees and agents related to the work performed on the Property. The City acknowledged receipt of Ms. Amacher's Tort Claim Notice on February 28, 2017.

23. At present, Ms. Amacher continues to receive unusually high water utility bills, despite the irrigation system being shut off, and the Property remains inundated with water that has effectively rendered a significant portion of the yard unusable based on the amount of standing water. In addition, the abnormally high quantity of water on the Property has flooded the basement of Ms. Amacher's home and threatens to cause additional future damage to the home.

IV. FIRST CLAIM FOR RELIEF

(Due Process Violation Under 42 U.S.C. § 1983)

(Against Defendants City and Amsberry)

24. Ms. Amacher realleges paragraphs 1 through 23 herein.

25. As a result of work performed by the City and its employees and agents, as well as defendant Amsberry, the Property has been damaged, altered, and a portion rendered unusable, thus depriving Ms. Amacher of rights guaranteed her by the United States Constitution, including the right not to be deprived of property without due process of law, as well as the fundamental right to possess property. Defendants City and Amsberry have provided Ms. Amacher with no additional means or avenues to remedy the negative impact on her Property. As a result, Ms. Amacher will continue to suffer an ongoing and irreparable harm to her constitutionally protected rights.

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26. The actions of Defendants City and Amsberry described herein were performed under color of law.

27. As a direct and natural result of Defendants City and Amsberry's deprivation of Ms. Amacher's constitutionally protected rights, Ms. Amacher has been damaged and is entitled to compensation in an exact amount to be proven at trial.

28. The actions of Defendants City and Amsberry constitute a reckless or callous disregard for Ms. Amacher's constitutionally protected rights sufficient to warrant an award of punitive damages in favor of Ms. Amacher.

29. Pursuant to 42 U.S.C. § 1988, Ms. Amacher is entitled to an award of reasonable attorney fees.

30. Ms. Amacher is entitled to interest on the principal amount of compensation from November 15, 2015, until fully satisfied.

V. SECOND CLAIM FOR RELIEF

(Inverse Condemnation)

(Against Defendant City)

31. Ms. Amacher realleges paragraphs 1 through 30 herein.

32. Since November 15, 2015, the City, without initiating formal condemnation proceedings, has exercised dominion and control over Ms. Amacher's Property and deprived Ms. Amacher of certain access or rights to the Property sufficient to reduce its fair market value.

33. The City's actions since November 15, 2015 constitute a taking and appropriation of Ms. Amacher's Property for public purposes without payment of just compensation, in violation of Article I, Section 18 of the Oregon Constitution, as well as the Fifth and Fourteenth Amendments of the United States Constitution.

34. As a direct and natural result of the City's taking and failing to restore Ms. Amacher's property, Ms. Amacher has been damaged and is entitled to compensation in an exact amount to be proven at trial.

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35. Pursuant to ORS 20.085, Ms. Amacher is entitled to costs, disbursements, and reasonable attorney fees.

36. Ms. Amacher is entitled to interest on the principal amount of compensation from November 15, 2015, until fully satisfied.

VI. THIRD CLAIM FOR RELIEF

(Negligence)

(Against Defendants City and Contractor)

37. Ms. Amacher realleges paragraphs 1 through 36 herein.

38. Ms. Amacher provided the City with appropriate Tort Claim Notice pursuant to ORS 30.275.

39. Defendants City and Contractor owed a duty to Ms. Amacher to perform work on her Property in furtherance of the Project. Defendants City and Contractor unreasonably breached that duty by failing to perform the necessary repairs and work in a reasonable and workmanlike manner, causing additional damage to the Property, as well as personal injuries to Ms. Amacher.

40. As a direct and proximate result of Defendants City and Contractor's breach of duty, Ms. Amacher has been damaged and is entitled to compensation in an exact amount to be proven at trial.

41. Ms. Amacher is entitled to interest on the principal amount of compensation from November 15, 2015, until fully satisfied.

VII. FOURTH CLAIM FOR RELIEF

(Injunctive Relief)

(Against Defendants)

42. Ms. Amacher realleges paragraphs 1 through 41 herein.

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43. As described herein, Ms. Amacher has suffered a significant deprivation of her private property as a result of the negligent work performed by Defendants City and Contractor, as well as Defendants City and Amsberry's refusal to pay just compensation for those deprivations.

44. Despite multiple requests to Defendants by Ms. Amacher, her Property continues to be inundated with significant amounts of water that have rendered a portion of her Property unusable and present a substantial risk of damage to her home.

45. Ms. Amacher therefore has an inadequate remedy at law.

46. To address this irreparable harm, Ms. Amacher seeks injunctive relief in the form of an injunction requiring Defendants to identify and stop the source of the water inundating Ms. Amacher's Property.

PRAYER FOR RELIEF

WHEREFORE, Ms. Amacher prays for judgment against Defendants as follows:

A. On Ms. Amacher's First Claim for Relief against Defendants City and Amsberry for due process violation under 42 U.S.C. § 1983, for an award of compensatory damages in an exact amount to be proven at trial;

B. On Ms. Amacher's Second Claim for Relief against Defendant City for inverse condemnation, for an award of compensatory damages in an exact amount to be proven at trial;

C. On Ms. Amacher's Third Claim for Relief against Defendants City and Contractor for negligence, for an award of compensatory damages in an exact amount to be proven at trial;

D. On Ms. Amacher's Fourth Claim for Relief against Defendants, for injunctive relief as requested herein, including ordering Defendants to identify and stop the source of water inundating Ms. Amacher's Property;

E. For an award of compensatory and punitive damages in an exact amount to be proven at trial;

F. For an award of reasonable attorney fees, expenses, costs, and disbursements;

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G. For an award of pre-judgment and post-judgment interest at the legal rate; and

H. For all such other legal and equitable relief as is appropriate.

Dated: April 19, 2017

RATHBONE BARTON OLSEN PC

s/ Brian J. Best

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